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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LOREN JOSEPH HERZOG,

Defendant and Appellant.

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H023906

(Santa Clara County Superior Court No. 210595)

Defendant was convicted by jury trial of three counts of first degree murder for the 1984 murders of Paul Cavanaugh and Howard King and the 1998 murder of Cynthia Vanderheiden and one count of being an accessory to the 1984 murder of Henry Howell.[1] He was acquitted of the 1985 murder of Robin Armtrout, and a multiple murder special circumstance allegation was found untrue. Defendant was committed to state prison for a total term of 78 years to life. On appeal, he asserts that the trial court prejudicially erred in admitting evidence of his post-arrest statements to the police because these statements (1) were obtained after he invoked his right to

[1] Defendant was tried on the theory that he had aided and abetted Wesley Shermantine, the perpetrator of these murders. Shermantine was tried separately and sentenced to death prior to defendant's trial.

remain silent, (2) were involuntary, (3) were the product of a warrant that was not supported by probable cause and (4) were the product of an unreasonable delay in defendant's arraignment after his arrest. Defendant also contends that the trial court prejudicially erred in (5) admitting evidence of incriminatory hearsay statements made by defendant's co-participant in the crimes and (6) admitting evidence regarding a photograph that depicted defendant holding a knife. Finally, defendant maintains that his right to due process was violated by the prosecutor's misconduct in referring to matters outside the record. We conclude that the trial court prejudicially erred in admitting evidence of defendant's post-arrest statements during interrogations on March 21 and 22, 1999 because these statements were the product of coercive circumstances that rendered the statements involuntary. Accordingly, we reverse the judgment.

I. Facts

Defendant and Wesley Shermantine grew up together and were close childhood friends. In June 1984, when they were 18 years old, they graduated from high school, and, in September 1984, they began living together in a house in Stockton. Although they did not live together for a long period of time, they remained "inseparable" throughout their long friendship.

A. Deaths and Disappearances

In the wee hours of the morning on September 1, 1984, Henry Howell, an American Indian whose car bore a sticker that said "Official Indian Car," was found dead by the side of a highway next to his car. His body was found in an rural area called Hope Valley that is along a route from South Lake Tahoe to Stockton. He had been hit in the face and then shot once in the back of the head with a shotgun. The shotgun wound had been at very close range and had been instantaneously fatal. There

were no defensive wounds. The killing had occurred sometime after 9:30 p.m. on August 31. Howell had a blood alcohol level of .12.

Howell normally kept his money in his front pants pocket. His left front pants pocket had been pulled out, and no identification, wallet or money (other than a $1 bill and some small change) was found on his body even though he had recently cashed a paycheck for several hundred dollars and usually carried a wallet. Howell's body bore a watch and a ring. The key was in the ignition of Howell's car.

Shortly after midnight on November 28, 1984, Paul Cavanaugh and Howard King were shot to death in King's car. King's car was parked about 40 feet east of Daggett Road about two miles west of Stockton in a sparsely populated agricultural area. King's body was discovered outside the driver's side of the car, and Cavanaugh's body was found outside the passenger's side of the car. The car doors were closed, and the bodies were lying face-up. The driver's side window and the passenger's side window were broken, and these windows had been shot out from the outside in with the doors closed. No other car windows had been broken.

King had been killed by a single close-range shotgun blast through the driver's side window that had struck him in the mouth on the left side of his face. He had been looking out the closed side window when the blast hit him. King's body had been removed from the car and dragged a short distance away. King was 6 feet tall and weighed 270 pounds. One of the front pockets of King's pants had been cut out and the other had been turned inside out. King was wearing a watch and a ring. His wallet was missing.

Cavanaugh had been killed by a close-range shotgun blast to the left side of his head while he was in the car. This blast had probably come after King was killed through the broken driver's side window. This blast was immediately fatal. Cavanaugh's body had been removed from the car and shot again at close range in the

chest while on the ground.[2] Cavanaugh was 6 feet and 2.5 inches tall, and he weighed 183 pounds. Cavanaugh's body had also been dragged a short distance from the car. A coat had been placed over his head, and his right front pants pocket had been cut out. Cavanaugh was wearing a watch. Cavanaugh's wallet was not found at the scene. The contents of the glove compartment had been removed after the windows had been shot out and the two men killed.

A set of tire tracks that did not match King's car were found behind King's car. These tire tracks were later found to have the same tread pattern as a small red pickup truck with a shiny grill that Shermantine owned at the time. About an hour before the Daggett Road killings, a woman driving home in a sparsely populated area 8 miles away from the scene of the Daggett Road killings was pursued by a small red pickup truck with a "shiny grill." The truck followed her to the entrance to her driveway and parked across the road, but it left after she drove quickly up her long driveway and went into her home. Tire tracks near her driveway were similar to the tracks behind King's car.

On September 5, 1985, 24-year-old Robin Armtrout, a petite red-headed woman, was last seen in front of her stepfather's home in Stockton getting into a red pickup truck with two men in it. On September 8, 1985, her nude body was found in a remote sparsely populated area of San Joaquin County. Armtrout's body was partially covered by foliage near a creek. Her undamaged clothing was subsequently discovered nearby. There were 45 knife wounds to her body, 14 of them to her neck. All of the wounds had been inflicted while Armtrout was alive. None of the wounds

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[2] An additional shotgun blast had been fired into the dashboard from outside the passenger's side door. This shot was probably the one that broke the passenger's side window. Cavanaugh may have still been in the car at that point since he had additional shotgun injuries to his hand and arms that were separate from his head and chest wounds.

would have been immediately incapacitating. Armtrout had a bruise on her face from a blunt object. She had died of shock and hemorrhage from the knife wounds. Seminal fluid was found in her vagina, but it was so diluted that no sperm or other DNA-containing substances could be recovered.

On October 7, 1985, 16-year-old Chevy Wheeler disappeared. Shermantine was an early suspect in her disappearance. Wheeler's body was never recovered.

At some point in time, defendant told someone in a bar that "Wes and I went up in the mountains and shot a guy on the side of the road." On another occasion, defendant said "he knew a mine shaft that he could throw a body down and never be found."

On November 14, 1998, Cynthia Vanderheiden, a friend of defendant, disappeared. Her unlocked car was found the next morning parked by a cemetery with her purse and cellular telephone inside the car.

B. Investigation of Vanderheiden's Disappearance

San Joaquin County Sheriff's Deputies Debbie Scheffel and Antonio Cruz immediately began investigating Vanderheiden's disappearance. After learning that defendant and Shermantine had been seen talking to Vanderheiden in a bar shortly before her disappearance, Scheffel and Cruz contacted and interviewed defendant. Their first interview of defendant occurred on the evening of November 15, 1998 in their car outside defendant's home and lasted about 45 minutes. A second interview occurred on November 20 at the Sheriff's office in an interview room and lasted nearly two hours. For this interview, the sheriff's deputies transported defendant from his home to the Sheriff's department and then took him back home after the interview. They interviewed him a third time on February 1, 1999, again in an interview room at

the Sheriff's office. This last interview was about a half-hour long. On all three occasions, defendant willingly spoke with the deputies and was not in custody.[3]

During these interviews, defendant told Scheffel that Vanderheiden had been flirting with him at the bar and seeking drugs. Defendant said he had last seen Vanderheiden when she left the bar. He insisted that he knew nothing about what had happened to her later. Defendant said that Shermantine had given him a ride from the bar to his home and had spent the night there. Defendant denied that Shermantine had had anything to do with Vanderheiden's disappearance. Scheffel told defendant: "If it comes right down to push and shove, wou-would, if would Wes choose, if Wes need to cover himself, he'd give you up in a heartbeat. You know he would!" Scheffel also told him that "at some point, . . . we would probably be ask you for a blood sample and hair, hair standard samples. Would you be willing to do that? To further eliminate you from what's going on." Defendant did not express a willingness to do so.

On November 16, 1998, sheriff's deputies looked in the trunk of Shermantine's car. The trunk was filled with tools, clothing, sleeping bags and other items. They saw nothing of interest. On January 20, 1999, Shermantine's car was repossessed. Sheriff's deputies were then able to conduct a more thorough search of the car. Human blood was found in the trunk of the car.[4]

C. Search Warrant Application

On March 15, 1999, Scheffel submitted an application for a search warrant to search defendant's residence and to obtain blood and hair samples from defendant. The warrant application was supported by Scheffel's affidavit. She recounted the facts

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[3] On November 20, defendant also agreed to have his photograph and fingerprints taken.

[4] This blood and blood found on the passenger's seat headrest was later found to be Vanderheiden's blood.

of Vanderheiden's disappearance, noting that her car showed no sign of any struggle. Scheffel described how Vanderheiden had been at the Linden Inn (a bar) between 12:30 a.m. and 2:00 a.m. on November 14 with her friend Curtis Cox. Cox saw Vanderheiden having a "whispered conversation" with defendant and Shermantine shortly before 2:00 a.m. When the bar closed, Cox drove Vanderheiden back to her car and followed her car to her driveway. He did not see her get out of her car.

Scheffel had spoken to Shermantine, and he had denied speaking to Vanderheiden that night although he had admitted seeing her at the Linden Inn. Shermantine claimed that he and defendant had left the Linden Inn together in Shermantine's car, gone to defendant's home and gone to sleep. He denied that Vanderheiden had ever been in his car, and he declined to allow his car to be searched. Shermantine had been seen cleaning out the trunk of his car on November 16, 1998.

Defendant, on the other hand, had told Scheffel that he had introduced Shermantine to Vanderheiden that night and that she had talked to them and played pool with them that night. Defendant, like Shermantine, claimed that he and Shermantine left the Linden Inn together in Shermantine's car and went back to defendant's house where they went to sleep.

After the January 20, 1999 repossession of Shermantine's car, human blood was found inside the trunk and on a tail light, and there were obvious signs of attempts to clean up the blood. Shermantine was interviewed again on January 28. He continued to insist that he had never talked to Vanderheiden and that she had never been in his car. Asked to explain blood in the trunk of his car, he claimed that a co-worker named Tim McIntyre had cut his hand and bled into the trunk of his car. Scheffel contacted McIntyre, and McIntyre denied that this had occurred.

Shermantine subsequently told his parents and a woman who lived with his family that defendant had "borrowed his car that night" after dropping Shermantine off at defendant's house and told Shermantine "he had arranged to meet Cindy."

Defendant later returned and told Shermantine "that he had flipped out and stabbed Cindy and that he had her body in the trunk." Shermantine told them that he had then gotten rid of the body by burning it. Shermantine subsequently told Scheffel that the only person who would have had access to his car on November 14 was defendant. Shermantine suggested that defendant could have killed Vanderheiden and disposed of her body.

Scheffel claimed that she needed blood and hair samples from defendant "for comparison to blood evidence" found in Shermantine's car "to determine if he is the source of this blood and other forensic evidence." The warrant was issued on March 15, 1999.

D. Execution of Search Warrant

On March 16, 1999, sheriff's deputies arrived at defendant's home to execute the search warrant. Sheriff's deputy Joseph Herrera attempted to execute the portion of the warrant seeking blood and hair samples, but defendant was not present so Herrera left. Other officers proceeded to execute the portion of the warrant authorizing a search of the residence. Defendant's wife was present throughout the execution of the search warrant, and defendant arrived home from work before the conclusion of the search. Early the next morning, defendant left a message on the sheriff's department answering machine saying that he would "call back later and make arrangements to talk to us." Defendant did not call back that day.

Herrera returned to defendant's residence with Cruz on March 17 shortly before 5:00 p.m. Both men were in plain clothes. Defendant's mother described the officers' demeanor as "quite friendly." Herrera told defendant that he had a warrant for defendant's blood and hair. He also told him that blood had been found in the trunk of Shermantine's car, that "DNA analysis was presently being conducted, and that we had some early returns as regards to the donor of the blood, and that the blood

belonged to Cyndi Vanderheiden." Herrera also told defendant: "we have evidence that causes us to believe that he has knowledge of the whereabouts or disappearance of Cyndi Vanderheiden; that we recovered blood which indicates it's Cyndi Vanderheiden's, from Wes Shermantine's vehicle; that had made statements that he had been with him the entire night before. I told him that if he killed Cyndi Vanderheiden, not to talk to me, I would recommend that he get an attorney."

When defendant started to speak, Herrera told him: "This is the last opportunity, if you are not guilty, you are going to have to be able to talk to me. But before you do, I'm going to advise you of your Miranda rights, and I'm going to take you down to our office, and I'm going to advise you of Miranda rights before I ask you any questions." Herrera told defendant "to remain silent until such a time he was asked any questions and was totally advised of his rights." Herrera "advis[ed] him not to say anything." Defendant "didn't respond." Herrera told defendant "that he did not have to talk to [Herrera]." Herrera went on. "I want you to understand that if you didn't kill Cyndi Vanderheiden that we believe you were there at the time. And that there was several different degrees of murder, inclusive of first degree murder, second degree, accessory, and so forth." He also mentioned the penalties for each of these offenses. Herrera "told him he would have to be going with us, to get in the car and we would be going to accomplish that [obtain the blood and hair samples]." Defendant told Herrera "he would have to be going with us." The officers told defendant's mother that defendant would be back in a couple of hours unless "he confesses" to killing Vanderheiden.

Defendant got into the backseat of Herrera's car. He was not handcuffed. Less than a minute after getting into the car, defendant said "What can I do to get out of this?" and he "began to cry." Herrera "told him he would have an opportunity to talk to us when we get to our office. However, I did not want him to make any statements until we arrived to our office and I advised him of his rights." Defendant "began to

make statements," and Herrera "stopped him from making any statements" and told him "I would prefer that he wait until he arrived at the office. He would be able to make any statements he wanted to, and that I would prefer that when we got there I Mirandize him and advise him of his rights before he says anything further." Herrera told defendant: "not to say anything until I can get in the proper setting and advise him entirely of his Miranda rights."

During the 20 to 25 minute drive from defendant's residence to the sheriff's office, they did not talk about the case but only spoke of "hunting, drinking, beer, that sort of stuff." The deputies did not ask defendant any questions. The deputies drove past the county hospital (where they could have obtained the blood and hair samples) and took defendant to the sheriff's office and into an "interview room." They "went to the sheriff's office so that I [Herrera] would allow him to provide statements as he indicated to me that he was desirous of doing."

Upon arriving at the sheriff's office, Herrera and Cruz took him into an interview room. The interview was videotaped. Herrera advised defendant of his constitutional rights, and defendant acknowledged that he understood these advisements. Herrera reiterated that "if you . . . don't wish to speak to us at any time, you can say so, okay?" Defendant appeared eager to talk during the four-hour interrogation that followed.

E. Interrogations of Defendant

Defendant was interrogated on March 17, twice on March 18, once on March 19, twice on March 21 and once on March 22. Only his statements during the March 17 interrogation, the first March 21 interrogation and the March 22 interrogation were admitted into evidence at trial. However, as the issues raised on appeal require us to examine the totality of the circumstances, we recount the full series of interrogations to which defendant was subjected during this period.

1. March 17 Interrogation

Defendant explained that he was acquainted with Vanderheiden because he had dated her sister. He acknowledged that Vanderheiden and Shermantine were not acquainted. On the night of her disappearance, Vanderheiden was looking for drugs. Shermantine had drugs, and defendant and Shermantine arranged to meet Vanderheiden at the cemetery after the bar closed. When Shermantine and defendant left the bar, Shermantine told defendant that he "wanted to fuck Cyndi's brains out." Vanderheiden met them at the cemetery and got into their car. They used drugs. Then, with defendant in the back seat, Shermantine drove around for a while and talked to her. She asked to be brought back to her car, but Shermantine began kissing Vanderheiden. Shermantine stopped the car and told Vanderheiden "don't play games with me, you know what I want."

Vanderheiden resisted Shermantine's sexual advances and asked defendant to "do something," but defendant told her "don't test him." Shermantine punched her in the face and demanded that she disrobe and perform oral sex on him. He threatened her with a knife with a six-inch blade held to her throat and said "I'll cut your fuckin' throat." She complied. Defendant told Shermantine "don't kill her man, take her back to her car." Eventually, Shermantine stopped the car again. He took Vanderheiden out of the car and raped her on the hood of the car while she tried to resist. Shermantine asked defendant if he "wanted some," and defendant said "no."

At some point, defendant got out of the car, looked around and then returned to the car. Defendant heard the "click" of a knife. He got out of the car and saw Shermantine swinging a knife and slashing Vanderheiden's throat. She was screaming "help me" and trying to fight back. Defendant heard Shermantine say "just let it come natural." Shermantine returned to the car and said "I got blood all over me."

Shermantine told defendant to get a blanket from the trunk. Defendant did not respond. Shermantine then asked defendant to "pop the trunk," and defendant

complied. Shermantine took a blanket out of the trunk and wrapped Vanderheiden's body in the blanket. Shermantine told defendant to help him put the body in the trunk. Shermantine lifted the upper body while defendant lifted the feet, and they put the body in the trunk. Shermantine shut the trunk and told defendant "[g]et in." Defendant got back in the car. As he drove away, Shermantine said to defendant: "I'm not going to prison. The little bitch would've told on me." Shermantine said "I bet you don't wanna see me for a while," and defendant said "I wish I could turn the clocks back." Shermantine drove to defendant's house where he washed himself off with a hose and changed his clothes.

Defendant denied that Shermantine had threatened him, but he admitted that he was scared of Shermantine based on prior assaults and threats. Defendant asserted that he was "ashamed" of having done nothing to help Vanderheiden. Defendant told the deputies that Shermantine had told him eight years earlier that he had killed Chevy Wheeler and buried her body on his parents' property. He also said that Shermantine had told him that he had "killed twenty-four people or some'n."

About halfway through the interrogation, the deputies let defendant take a break and have some cigarettes. They also allowed him to talk to his mother on the telephone. The interrogation then resumed. The deputies repeatedly suggested that Shermantine might have "another crime" that "you two did together at one time" that Shermantine was trying to "hold over your head." Defendant denied that and insisted that he had never seen Shermantine do anything like this before. The deputies also suggested that Shermantine was trying to blame defendant for Vanderheiden's murder.

Herrera tried to get defendant to talk about other crimes. "I don't think you wanna go there, Loren, I don't, I r-, I really and I understand why, but I think you have knowledge of some other homicides that he's done. And at some point and time, maybe not right now, you know, and I'm-I'm not gonna push you, okay? It may be

very ad-advantageous for you to spend a couple of hours, of your life, to make sure that the truth comes out. About the evilness inside of this guy."

Defendant was not eager to talk about other crimes but suggested that he might be willing to at some later date. "You know what I mean, you said sometime, take a couple of hours, maybe I can write you out a letter or somethin'." Herrera did not let up. "Yeah, let me, let me just kinda touch on a couple of things and we won't even go there, okay?" Defendant said "I don't want to go there now."[5] Cruz asked about "Dagget Road," but defendant denied even knowing where that was located. At the conclusion of this interrogation, defendant acknowledged that the only thing he had been promised was that the deputies would give him a ride home.

About an hour after the end of the March 17 interrogation, the deputies took defendant on an hour-and-a-half long ride out to the location that defendant had described as the scene of Vanderheiden's murder. No additional advisements were given. They taped their conversation with defendant in the car but no significant incriminating statements were made by defendant. Before they went out on this ride, the decision had already been made to arrest defendant. Defendant was subsequently taken to the hospital so that the blood and hair samples could be obtained pursuant to the warrant. These samples were obtained after midnight. Defendant was placed under arrest in the early morning hours on March 18, and he spent the night in jail.

2. March 18 Interrogations

The next interrogation occurred at 1:00 p.m. on March 18.[6] At the outset of the interview, Herrera said "I just have a couple of questions and then I can answer any

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[5] The trial court found that this was an invocation of defendant's right to remain silent and suppressed the remainder of this interrogation. Nevertheless, the interrogation continued for a little bit longer.

[6] Shermantine was arrested on March 18. He invoked his rights and was not subjected to questioning.

questions that you have but I need to read you your rights before any of that, that stuff." Defendant said "Again?" Herrera responded: "Yeah, it's just a formality." He proceeded to advise defendant of his constitutional rights. Cruz then asked defendant "Do you understand those rights?" Herrera said "It's the same thing as earlier." Defendant responded "Not really. I haven't been understandin' the whole thing." Cruz said "What don't you understand, Loren?" Defendant said "What the hell I'm doing here." Cruz again asked defendant if he understood his rights. Defendant said "Yeah whatever, I understand them."

The deputies told defendant that he had been charged with Vanderheiden's murder. Defendant said "[y]ou guys fucked me, man." Cruz told defendant "We need to clear that up. Otherwise, this is gonna stick." Defendant said "I don't want that to stick, man." Cruz responded: "Then you better you better s--you better cooperate with us then."

The deputies told defendant that Shermantine was "blaming you, exactly what we told you. He also told us basically that you were the one that raped her." "And that you were the one that killed her." They also told defendant that Shermantine was claiming that defendant had killed two men on Daggett Road.[7] Defendant made no further admissions during this 15 to 20-minute interview. At some point during the day, defendant talked to his wife.

About two hours after the brief interrogation by the deputies, defendant was interrogated by Stockton police detectives Rick Ragsdale and Cliff Johnson. This interrogation lasted for two-and-a-half hours. At the commencement of the interview, defendant commented "Um, but I don't have a public defender or anything;" "Am I supposed to be answering any questions?"; "I don't understand how this all goes, you know, really;" "And, uh . . . all I know is I wanna go home." Ragsdale responded by

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[7] These assertions were untrue.

saying "I'll read you your Miranda and stuff." Before doing so, Ragsdale introduced himself and Johnson. Defendant said "All you guys . . . got good attitudes, man." Ragsdale told Johnson (who had just arrived) that defendant "was just asking me about, uh . . . uh, having a public defender . . . defender assigned to him and, uh . . . ." Defendant interjected "Well, yeah, something. I don't know . . . I don't understand." Ragsdale and Johnson then told defendant that they were going to "read you your rights" because he was in custody. Defendant replied "You guys aren't gonna talk to me then and slap a murder charge on me or something, are you?" Johnson said "I don't know . . . cuz I don't know what we're gonna talk to you about." He told defendant that they were not going to talk to him about the Vanderheiden case because that was "the Sheriff's Case." "We're gonna talk to you about some other things, and it may not have anything to do with you, but you may know something about it." Defendant said "Okay." Ragsdale then informed defendant of his constitutional rights. When he asked defendant if he understood his rights, defendant responded "Yeah, I guess so."

Ragsdale proceeded to question defendant about the Chevy Wheeler case. Defendant was responsive to Ragsdale's questions and expressed no reluctance to speak with Ragsdale. Defendant told Ragsdale that Shermantine had admitted killing Wheeler and burying her body. Ragsdale encouraged defendant to tell him all that he knew. "I think what you need to do in . . . in this kinda case is anything that you know about him to put it out there, and if he's got something on you, and we need to get that out on the table and be able to take care of that somehow. But, uh . . . the thing you need to do, I think, is just, uh . . . tell what you know and if you're not involved in any of this, just, uh . . . tell it. And even if you do have some involvement, uh . . . ." Defendant insisted that he had no "involvement" in the Wheeler case.

Defendant repeated to Ragsdale and Johnson that, six or seven years earlier, Shermantine "told me he killed 24 people." Ragsdale told defendant "I have a feeling

that he [Shermantine] has something that he's trying to hold over you." Defendant said "That's what everybody says." Johnson told defendant "this is kinda like your, I guess, a chance to . . . come clean in regards to get all this stuff that . . . Wes is got you into one way or another." Defendant responded "Yeah." Johnson went on: "Come clean, get it all out of the way so it can't come back and haunt you later on . . . ." He suggested that Shermantine would blame defendant for Wheeler's death.

Ragsdale and Johnson mentioned the killing of an "Indian" and the Daggett Road killings. Defendant said "And he says I did all this?" Ragsdale said "I haven't talked to Wes yet. I need to talk to Wes but, uh . . . ." "What I'm saying, if he's got something on you . . . and it's something like this [the Daggett Road killings] that . . . I mean, what could be worse than this? We . . . we could do something about this. Yeah. If you had something to do with this or something else, let's take care of it and let's get it done with." "[I]f he's got somethin' on you, we need to find out now. I don't wanna find out by asking him and then runnin' and havin' evidence checked and puttin' pieces together like that." Johnson continued with the same theme. "We're givin' you kinda the opportunity to say, look, here's my involvement in this shit and here's what he's got on me. Because if you come out and say, I don't know anything about this, I don't know anything about that. Now we're here to . . . I mean, we're, basically, here to believe what you have to say, okay? If we didn't wanna hear what you had to say, we didn't wanna believe in what you had to say, we wouldn't be here. Okay? So we come and give you the opportunity to tell us the truth . . . ."

Johnson suggested that Shermantine would decide that he was not "gonna go down alone" and would implicate defendant in everything Shermantine had done. Defendant responded: "It's hard to say any damn thing when you're sittin' here in chains when you didn't kill somebody, you know. . . . and I'm scared to fuckin' death to tell you the truth. I don't know why, but I am. Cuz . . . I'll tell you why, I'm sittin' here in chains." Ragsdale again encouraged defendant to talk. "I mean, there's other

things than . . . than this. I . . . don't know what he's got [on] you. Only you know what he's got on you. And as long as you keep it locked up inside you, it . . . we're not gonna be able to . . . be able to use it to help you at all."

Ragsdale then brought up the Robin Armtrout case. Defendant did not reveal any knowledge regarding Armtrout. "I want outta these chains and I wanna go home." "I'm tryin' to save my ass . . . and I'm trying to help you guys too." Ragsdale said "I don't want you to get hammered on somethin' because he has something over you and you don't wanna tell me about it. Okay?" Defendant replied: "Well, that's scary, you know." Johnson suggested that Armtrout's death had occurred in the "same scenario of what happened with Cindy . . . ." He encouraged defendant to tell them what he knew about these other cases. Trying to take defendant's perspective, he said: "[W]ell, I could tell'em . . . okay? . . . then they can either believe me that I was just a . . . you know, an innocent party to it, like, fuck I don't wanna see any of this crap or do I not say nothin', hopin' they won't find out. But then Wes fronts you off . . . ."

The detectives showed defendant a picture of him and Shermantine together and said "[t]his is the way people are gonna remember you." Defendant said "I've got one you should have. It's got guns in it . . . like this, not beer bottles." Johnson suggested that the photo could be presented to "the jury" "in court" to associate defendant with the killings because "we all know that there was somebody else there [besides Shermantine] . . . we don't know if that person did anything . . . ." Johnson speculated that a jury might think "[d]oes that man look like he don't wanna be a part of that?" Johnson also posited that Shermantine would implicate defendant as an active participant in all of the killings. Defendant said "That's what he's gonna say. You're right." "But that don't mean I was there." "I don't know what the fuck to do, man. I . . . I appreciate what you're tellin' me cuz you make some sense big time, man." Johnson said "we're not here to screw you in any way." Defendant told Johnson that he was "scared fuckin' shitless." Johnson said: "I mean, we're not

gonna lie . . . and say, hey, if you tell us everything you know about everything, that you're gonna be with your wife tonight out of them chains and everything else cuz we . . . don't have that control." "[W]e can walk in and you can tell us, hey, why don't you just get the fuck away from me, I don't wanna talk to you at all. Okay? And . . . we can't give you anything."

Johnson told defendant: "The only thing that can help you is . . . your being honest and straight forward. I mean . . . that's really the only thing can help you." Defendant said he did not trust the sheriff's deputies. He thought they had lied to him because they had told him they would take him home and he ended up in jail. Defendant repeated that he was "scared" and said "[i]t don't look good for Loren." Johnson continued to urge him to talk. "I can see it right now that this shit is . . . I mean, it is eatin' at you and, I mean, you're . . . you're debatin' right now. I mean, I wanna get all this shit out because as soon as you . . . I can guarantee you as soon as you come up on everything, you will feel better. Because it's not gonna be eatin' you as much inside." Defendant responded "I don't know."

Johnson went on. "The thing is is that there's nothin' that can help you but you. And that's gonna be the truth. . . . I mean, if in fact, any of this stuff goes to court, okay? . . . who they wanna believe? They wanna believe a person who's potentially remorseful and says, hey, I didn't have no part of this shit. This is all on Wes, and he's crazy as hell, and he does this, and he always pulls me into it for whatever reason. If that . . . and he does that to keep you down, to keep you hosed into his group, maybe that's fact. People can understand that. People can understand makin' mistakes because everybody does." Defendant questioned "how can I get'em to believe that." Johnson responded "By being honest." Defendant said "Cuz it is the truth." Defendant worried that "they'd believe him pretty easy too." Ragsdale interjected that "the truth is gonna fit. When he starts tryin' to throw a bunch of crap in there, it ain't gonna fit in the little holes." Defendant said "That makes sense."

Referring to the Wheeler case, Johnson told defendant "I mean, we know what happened. We know all kinds of shit that . . . we're not even tellin' you, okay? . . . cuz we're here tryin' to get information from you not, you know the other way around. But the bottom line is that we know. Okay?" Defendant said "I can see that." Yet defendant insisted that he knew nothing about the Wheeler case. "Honestly . . . you know, I might know more about other things . . . ." "Like I said, I might know more about the other things, but the Chevy Wheeler, I really don't know." "That's the problem with the Chevy Wheeler case, man, is . . . man, I wasn't there."

Eventually, Ragsdale brought up the "Indian" case and the Daggett Road case again. "And you said that there were some things that you knew that you're not tellin' me about." Defendant replied: "I said there might be some things." "I might know some things."

At defendant's request, the detectives got him a soda. Defendant noted that he had not eaten "for awhile" because he had been asleep when food was served at the jail. He explained that he had not had much sleep prior to his arrest and was "like dead on my feet" before sleeping in jail.

Johnson resumed his campaign to get defendant to tell them everything he knew. "The situation you're in right now, right this minute. Okay? With the information they have against you . . . I mean, I don't know, okay? But say worst case scenario, worst case scenario, you have to go to prison for whatever amount of time. Okay? May . . . say it's two years. Okay. Now you go to prison for that two years, okay? . . . and you're out. You're free of this situation. You still got that other shit behind you, okay?" He suggested that Shermantine might then implicate defendant in other crimes. "You get drawn back into this mess . . . And now you're not gonna get no ten years cuz now maybe he's bringin' up all kinds of shit, I don't know. The hook is pullin' you back in. Get rid of that hook, he's got nothin' against you. He got nothin' to pull you back in. So once you're done, you're done with

everything . . . You're no longer got that behind you. That monkey's off your back. And that's what we're talkin' about, okay? Get that shit behind you so it can't come up in the future, especially can't come up in court. He can't use it against you." Defendant interjected that he had been to jail twice for less than 30 days.

Johnson went on. "And the only one that can protect you is you. Okay? How do you protect you? By being straight forward, cleanin' your slate so it can't be used to hammer you later on, or pull you into the mix later on. Okay? Does it get you in trouble now? I don't know. Okay? I don't know what it is?" "Cuz we're not here to screw you. . . . We got nothin' against you. All we want is the truth, okay?" "But all we can [d]o is is we can say, hey, look, you be straight with us and we'll be straight with you, and you tell us the truth and we'll write it down that way . . . And what's gonna hurt you the most in this situation or any other situation is a lie."

Ragsdale returned to the Daggett Road case. "I know both of you guys were out there at that double [homicide]. I don't know what happened out there, but I know you were both there. And I . . . know that . . . two guys got killed and shot with shotguns." Defendant said "I know you know I was there." "Well, it's just like everything else, if I don't say somethin', then he can try to put everything on me." At that point, defendant began incriminating himself in the Daggett Road killings. He admitted that he had been with Shermantine in a car when they stopped near the victims' car. When Ragsdale pressed him to "[t]ell me now it went down," defendant said "I don't want to though, man" "[b]ecause then I'm gonna be lookin' at another murder charge, huh?"[8] "Whether I did it or not." "It's the same way as this other one, I didn't do it."

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[8] The trial court found that defendant's statement "I don't want to though, man" was an invocation of his right to remain silent.

Johnson encouraged defendant to tell them more about the Daggett Road killings. He told defendant that they would be able to "look at the evidence" and confirm the truth of his statement. Defendant was unconvinced. "Yeah. Well, I don't know. I think I need somebody to advise me on talking or somethin'. Or I'll be all this shit, wouldn't I?" Johnson said "that's up to you." Defendant asked "What do you guys think? . . . Would you guys, in my shoes . . . ." Johnson said "I don't know where you are in your shoes." Defendant said "[I] don't either. That's why I need somebody that knows what . . . ." Johnson said "it's not right for me to say either way."

Defendant complained about the consequences of his telling the sheriff's deputies about the Vanderheiden killing. "I told 'em what the hell happened, bam, I'm in jail . . . for a murder rap. But I'm goin', wait a minute, I didn't do it, but I'm still in fuckin' jail. So it's hard for me to say anything." Johnson continued to try to persuade defendant to tell them everything. "Ain't nobody can give your version but you. . . . it goes to court, and the jury's gonna go, hum, well, why . . . you know, Loren came up. He seems like he's . . . I mean, it bothers him. I mean, he's not this cold-blooded killer kind of person. . . . Who are we gonna believe? . . . If . . . you look at him, you say, wow, he's come forward . . . he feels bad about shit that happened." Johnson said his "guess" would be that the jury would believe defendant instead of Shermantine in that scenario.

Johnson again encouraged defendant to "clean the slate" by telling "one hundred percent of this story." Defendant asked "[i]s there a chance I can talk to you guys another time, too?" Johnson said "the chance is always there." He noted that defendant would be arraigned on Monday. Defendant said "I don't even know what arraignment is." Johnson explained that defendant would be taken "into court," informed of the charges and given a public defender. Defendant inquired "so I don't get one not till Monday." Johnson said "Yeah." "I can't say what that . . . public

defender will do, okay? . . . but, generally, they'll say don't talk to nobody, just talk to me. Does that help you or hurt you? I don't know. Okay?" "[I]t can do both." Again, defendant inquired "so I don't get one of those until Monday?" Johnson confirmed "Til Monday." "[Y]ou're still here tomorrow, Saturday and Sunday before that ever happens." Defendant asked Johnson "do you think maybe I'll get a chance to get out Monday?" Johnson said "I don't know." "[T]he only way I get a picture of you getting out on Monday is if the District Attorney's Office came forward with whatever you've given the sheriff's department, and the sheriff's department went to them and said, you know, we think Loren's being truthful, you know, cut him loose or whatever." Defendant said "well, if I don't get out soon, I don't have a job."

Johnson urged defendant to "get that monkey off your back . . . ." Defendant asked "[i]s this a one-time offer?" Johnson said "come Monday, once you get a public defender, our ability to talk to you may be null and void. We may not be able to come and talk to you." Defendant suggested "I can call," and Johnson said "you can call us." Defendant said that Cruz had told him that "[h]e can't come see me if I have a public defender, but I can call him and he can come see me." Johnson said "Sure." Johnson then reiterated that they could talk to defendant up until his arraignment and "then we can't" "because then you've got an attorney, but then if you want to call us." Defendant asked if what he told an attorney "ain't gonna go no further," and Johnson confirmed as much.

Johnson continued to encourage defendant to tell them about the other murders. "I guarantee you, once all that monkey's off your back . . . you're gonna feel a hundred percent better." Defendant expressed concern that people would believe Shermantine's attempts to implicate defendant. Johnson said "that's possible. But . . . the difference is is that he's talkin'. If you're not, who are they gonna believe? They're gonna believe the guy who's talkin' because he's the only one makin' any

sense . . . ."[9] Defendant asked "[w]ill you guys give me time to think about it?" Johnson said "Sure." Defendant told Johnson "you're pretty cool." Ragsdale suggested that Shermantine was going to blame the Daggett Road killings on defendant. Defendant conceded "[y]ou're right." He asked when they were going to question Shermantine about the Daggett Road killings. Ragsdale said "Soon."

Johnson said: "[I]f I can do something to help you in the sense of . . . you know, writing down a truthful statement and show in my report that . . . you're remorseful . . . I'll put that in there. If it means going to the District Attorney sayin', hey look, he's remorseful, he feels bad about it, I'll do it." He encouraged defendant to get everything "cleared up" so that "there's nothing hanging loose on you. . . . what I'm getting' at is worst case scenario, say you're in here for two weeks. Okay? That's two weeks that you can't work, okay? . . . and you lose your job. So you have to get a new job in three weeks. Okay? A month from now, two months from now is when Wes decides hey, let me tell you all about, you know . . . and now you're back in" and "you lose that new job . . . ." He also suggested that defendant might spend "the next twenty years in prison just on this case [the Vanderheiden murder]." "[I]t's not one of these deal things in regards to, you know, I help you, you help me. It's got nothin' to do with that. You got to help yourself. And I'm gonna be honest and straight forward and tell you, hey, okay, I will go talk to the D.A. and say you're being cooperative, you're being helpful and whatever . . . ." Defendant thanked Johnson and said "you've been pretty understandin' about this." Johnson ended the interrogation by telling defendant "feel free to give us a call, alright?"

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[9] Johnson's representation that "he's talkin'" was false. Shermantine had invoked his rights and refused to speak.

3. March 19 Interrogation

Defendant was visited by his wife on March 19 at 1:30 p.m. Cruz and Sheriff's deputy Bruce Wuest subsequently interrogated defendant for 45 minutes. They gave him an abbreviated incomplete advisement of his constitutional rights. "[Y]ou know your rights though, right? You have the right to remain silent, anything you say can and will be used against you in a court of law, you have the right to an attorney, if you can't afford an attorney one will be appointed to you if you wish. Right?" Defendant said "Yeah." One of the deputies said "Still understand those?" Defendant said "Yeah."

Defendant seemed eager to talk about the Vanderheiden killing. He explained that, after talking to his wife, he realized that he "didn't tell you everything" because "I didn't tell you . . . the threatening parts." Defendant said that Shermantine "told me if I didn't help him [and] keep my mouth shut, he was gonna fucking kill me." Defendant claimed that Shermantine had made this threat "[o]n the way home." Defendant also said that, while Shermantine was raping Vanderheiden, Shermantine twice said to defendant "[c]ome over here and get yourself some . . . ."

Defendant provided additional details about the Vanderheiden killing. He reiterated that he had told Shermantine "not to kill her, I said don't kill her, also I told Cindy don't test him, you know, like meaning don't push him . . . ." While Shermantine was raping Vanderheiden, Vanderheiden twice asked defendant to "help me" and "do something." Defendant twice said to Shermantine "[d]on't kill her." Defendant knew that Shermantine was going to kill Vanderheiden when he heard the "click" of the knife. After Shermantine killed Vanderheiden and wrapped her body in a blanket, he told defendant to help him put the body in the car and, as they did so, said "keep your mouth shut or I'll kill ya." Shermantine repeated this threat as they drove to defendant's home afterwards. He also asked defendant "What's the story?" Defendant did not reply. After they got to defendant's house, Shermantine said "all

you have to do is keep breathing." Defendant interpreted this as "part of the keep quiet or I'm gonna kill you" threat.

When defendant was done talking about the Vanderheiden killing, one of the deputies asked him if he had been "present" at "any other crime scenes." Defendant said "I'd rather not get into that now."[10] The deputy said: "Let me ask you this, all right, all I need is a yes or a no. Were you present at some other criminal activity that Wes Shermantine was involved in, yes or no, we don't have to get any details?" Defendant said "Yes." The deputy then clarified: "Homicide?" Defendant said "Oh." The deputy said: "Were you present, all you have to say is yes or no, that's all I need to know. No details yes or no?" Defendant said "Yes." The deputies then terminated the interrogation.

4. First March 21 Interrogation

Defendant was not interrogated any further on March 19 or at all on March 20. The next interrogation was conducted by Johnson and Ragsdale in the early afternoon on March 21 and lasted an hour and a half. They did not immediately inform defendant of his constitutional rights. Defendant asked them "[t]hey're not gonna let me go, are they?" Johnson asked if he meant at the arraignment, and defendant said "Yeah." Defendant mentioned "I tried to put in a request today, to see ya, I mean." "Just to see if I could get . . . Actually I wanted to see if you could get my wife down here, I mean." Johnson said "you have the availability, on your own, without anybody kinda of directing you or your life, which is what you'll probably get later on . . . , you know, if in fact you try to get a-a public defender or private attorney." Johnson returned to his theme. "I told you before it's one of those is that if he says this and you don't say anything, whether or not it's just enough to put it back on him, you know."

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[10] The trial court found that defendant's statement "I'd rather not get into that now" was an invocation of his right to remain silent.

Defendant inquired "[i]f I say enough, does it put it back on him?" Johnson said "if he calls a bunch of crap on you and you don't throw nothing back, all that crap's still piled on you." "[W]hat happens to you? I don't know. Do you get to go scot free? I don't know, maybe, but I don't know, okay? Do you get the same punishment as his? I don't know, maybe, maybe not, okay? It just depends."

At this point, Johnson told defendant that he was going to inform him of his constitutional rights. Defendant said "Yeah, I still don't understand 'em, but go ahead." "I ain't never understood 'em so . . . ." Johnson said "You have the right to remain silent, okay, you understand that one?" Defendant said "That's kinda like what you were just explainin' to me." Johnson responded "For all it is that you not, I mean, you have the right to not say nothing, period. Okay? You can drink your soda and may say nothing whatsoever . . . ." Defendant said "But that would more hurt me than anything else." Johnson said "Will it hurt you, I don't know, 'cause I don't, again I don't know what you have to say. Okay? And the next one is anything you say, can and will be used against you in a court of law. Is that explains to you that everything you discuss here, okay, could be used against you in court, okay? It says can and will be used against you. It will be used against you, can be used against you, okay? You have the right to talk to a lawyer, have him or her present with you while you're being questioned. So if you wanna say, 'Hey, I wanna lawyer, you're not gonna get one until Monday, until, unless you can afford one, to come in right now but, we're not gonna talk to you, okay? And wh-, I mean, then we won't talk to you at all. You feel like can't hire an attorney, a lawyer, one will be appointed to represent you before any questioning, if you wish and that's, again, where you can't afford one, then one's gonna be given to you come Monday in regards to Cyndi's case, okay? And, then if and when you guys decide to talk with us, you and your lawyer, then you can, or you won't, one of those two things. You understand each of these rights I've explained to you? That yes, no, maybe?" Defendant said "Yes."

Ragsdale asked defendant if he had "given any more thought to . . . what happened out on, ah, Daggett Road?" Defendant said "Not really." Ragsdale asked "What can you tell me about that?" Defendant said "I don't know whether I should tell you about that." Johnson interjected "Put it this way, we know about it . . . ." Defendant said "I know you guys do." Johnson told him "this is kinda your chance to tell your version of what happened and to tell us what you saw and how you felt." Defendant said "Kind of felt like I do now." Defendant proceeded to respond to their questions about the Daggett Road killings.

He described how they had pulled up and Shermantine had said "You wanna rob these guys." Defendant said he had replied "No." Shermantine then said "Come on." Shermantine got out of the car, walked up to the victims' car and "started shooting." Defendant stood behind the victims' car and watched. Shermantine handed his gun to defendant, took defendant's gun and resumed shooting. Shermantine then pulled the victims from the car and "emptied their pockets" using a knife to cut the pockets open. Shermantine took the driver's wallet and $11 from the passenger's pocket. Defendant asserted that he had not looked at the victims, but Shermantine had told him that they were black. Defendant told Johnson that Shermantine "would just hold it [the Daggett Road killings] over my head." Defendant said he had not come forward before because he was scared of Shermantine. After he had made these admissions, defendant said "Probably should've remained silent, huh?"

After defendant had described the Daggett Road killings, the detectives allowed him to have a cigarette break. Just after the break, defendant said "Oh, man. Do we have to keep talking?" Johnson said "Well, I'd like to. I know you really don't want to but . . . ." Defendant said "I don't. I really don't." Johnson said "that's your, your choice . . . that's, you know, if you don't wanna talk with us that's, ah, we can, we can stop, like I said, after I mean coming, once you go in tomorrow, whether or not we'll be able to talk about anything any more, I don't know. . . . it's up to you, we can talk

until your wife gets here." Johnson again encouraged defendant to talk, but eventually he said: "Is it you don't know anything else or you just don't wanna talk about anything else?" Defendant said "Don't wanna talk."

Johnson and Ragsdale did not immediately terminate the interrogation. Johnson asked defendant if "someday . . . if it becomes advantageous to you, you may wanna discuss other things?" Defendant said: "Yeah, oh definitely there, yeah. Maybe someday I can tell you about 'im either way." After defendant mentioned that he did not have an attorney "yet," Johnson said "you'll get him tomorrow or at least, be issued one or him or her." Defendant made no further admissions during this interrogation.

5. Second March 21 Interrogation

Immediately after Johnson and Ragsdale completed this interrogation, Cruz and Herrera arrived and commenced their own hour and a half long interrogation. They did not readvise defendant of his constitutional rights. Defendant told them that he had talked to the detectives about the Daggett Road killings. Cruz said "No others?" Defendant said "He [Shermantine] say I was in more?" Cruz said "Yeah." "He talked about an Indian fellow." Cruz suggested that Shermantine had told them that defendant had killed an Indian man one night while he and Shermantine were on a trip back from gambling at Lake Tahoe. Defendant then admitted that "we was there" and "Wes killed that guy." He told the deputies that this killing had occurred before the Daggett Road killings and that it was the first time he had seen Shermantine kill anyone. "[W]e's coming down the road and he seen some dude fuckin' laying on the side of the road kinda like fucked up . . . , we turn around and Wes robs him an-and kills him too, the dude was so drunk, the dude would've never fuckin' known nothing anyways but Wes, he had to kill that dude." Defendant recalled that Shermantine beat the man and then "shot 'im" with a revolver. Defendant was standing next to the car watching. He heard only one shot. Shermantine took $45 from the man and gave

some of the money to defendant for gas. Defendant admitted that he was driving and had turned the car around at Shermantine's request after Shermantine saw the Indian man lying on the side of the road.

After making these admissions, defendant expressed his "trust" in Cruz and Herrera. "You told me you needed my help puttin' 'im away, I know you did. You said trust you." "And . . . out of everybody, I'm trusting you, Tony [Cruz]." "More than anybody." "And Joe's [Herrera] pretty cool, I'm trusting Joe too. Both of you guys, I-I'm trusting you guys more than anybody."

Herrera then brought up the Armtrout case. Defendant denied any knowledge of it. Herrera said "I wanna make sure that . . . we're done and, w-we've gotten, we know everything we need to know because, ah, that what Wes has said and you know, this isn't gonna go on forever as far as us talking to you and having any more opportunities . . . ." "I just wanna make sure that when we walk outta here that no-nothing, no surprises come up . . . ." Cruz said "That's the reason why you're, wanna clear it all up." Defendant responded: "Just the Robin ARMTROUT one is the last one?" Cruz said: "No. There, there's another one but I can't, I don't wanna keep doing this 'cause if I keep putting in, I'd rather have you be forthcoming." Defendant said "I can't remember it all, man" and complained that "my mind feels like mush, man." Herrera said: "What we need to know is if you was [with] Wes when he picked up Robin ARMTROUT and if-if by chance, you got dropped off before something happened to her." Defendant said "That's possible." "Yeah. I don't remember her name or noth'n . . . ." "We picked up a girl but I mean, I never took her to no creek with 'im."

Cruz said: "This is our last opportunity to clear everything up, hundred percent, your-your credibility here is at stake." Defendant replied: "Ah, since this is the last one, then the only thing that I do know is he killed this other girl then it must be her." Cruz said "I'm not saying this is the last one . . . ." Defendant said "I'm saying this is

the last one that I can remember." Defendant then admitted "I was with him" when he killed "a girl" sometime around September 1985. Defendant recalled that they had picked the girl up in his car but then gotten Shermantine's car. Shermantine stabbed the girl to death. When asked "what happened," defendant said "just about the same thing with Cyndi." Shermantine raped the girl by threatening her with a knife and punching her. He forced her to remove her clothing and raped her outside of the car. Then he stabbed her to death with a knife. Defendant claimed that he did not watch, but he heard the girl screaming and begging for her life. The girl did not ask defendant for help, and defendant did nothing to try to stop Shermantine. Shermantine told defendant afterwards that he killed the girl because "[s]he mighta told on 'im."

At the conclusion of this interrogation, Cruz asked defendant whether he had understood "completely" "the rights that they read you" "earlier." Defendant said "Yeah." Defendant also affirmed that his statements had not been made in response to any promises or threats. Cruz said: "And everything you gave is of your own free will, is that correct?" Defendant said "Yeah." Defendant said: "I wish I had said, 'Yeah, you promised me I was getting outta here,' but you didn't . . . ." He also said "So I'm never getting out of here." Defendant affirmed that Cruz, Herrera, Ragsdale and Johnson had "been fair" to him. After this interrogation, defendant was visited by his wife and his parents for over an hour.[11]

6. March 22 Interrogation

The final interrogation occurred on the morning of March 22 and lasted a little over an hour. Herrera and Alpine County Detective Everett Brakensiek interrogated

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[11] On March 21, while in custody, defendant was overheard asking his wife to "hide the Mossberg [shotgun]." A Mossberg shotgun had been seen, but not seized, inside defendant's bedroom during the March 16 search of his home. A search conducted after this statement was overheard found the same shotgun in a locked safe in defendant's residence.

defendant prior to his arraignment. Herrera told defendant "this is the very last o-opportunity there is, ah, to express any information that you missed or whatever, but before I do that and talk to you about all that, I'm gonna do the same thing we've always done in regards to, ah, reading your Miranda rights." Herrera then fully advised defendant of his constitutional rights. When he asked defendant if he understood his rights, defendant said "Yes." They went back over the facts of the Howell case. Defendant asserted that he initially thought that Shermantine "was gonna help 'im." The man tried to stand up, and Shermantine began beating the man. Defendant got back into the car "'cause I didn't like this scene." They also went back over the facts of the Armtrout case. At the end of the interrogation, Herrera again had defendant affirm that he had not been made any promises. Herrera asked defendant: "What reason did you decide to tell us everything you knew?" Defendant said "Well . . . don't know. Been hoping that I'd be able to go home." "And I would get that, get the killer off the street." "I feel, it's gonna work out, man. I'm going home sometime. I got, I gotta go home see my wife, kids, you [k]now, I gotta raise 'em."

II. Procedural Background

On March 22, defendant was charged by complaint in San Joaquin County with five counts of murder for the Howell, King, Cavanaugh, Armtrout and Vanderheiden killings. A public defender was appointed to represent him. Defendant was eventually charged by amended information with those same five counts of murder (Pen. Code, § 187), and it was further alleged as a special circumstance that defendant had committed multiple murders within the meaning of Penal Code section 190.2, subdivision (a)(3). A change of venue led the case to be tried in Santa Clara County. Before defendant's trial, Shermantine was tried and convicted (also in Santa Clara County) of several counts of murder and sentenced to death.

The prosecutor's theory at trial was that defendant had aided and abetted Shermantine in the murders. The prosecutor asserted that defendant and Shermantine were "partners" throughout these events and that their drug use had played a significant role in the crimes. He relied on a felony-murder theory and a natural and probable consequences theory both of which were based primarily on robbery and rape as the target offenses.[12] The prosecutor argued to the jury that the killings of Howell, King, Cavanaugh and Armtrout were "gratuitous" because none of them were necessary to the perpetration of the robberies or the rape. The prosecutor told the jury at trial that defendant's statements were filled with lies.

The defense at trial was that defendant "[d]idn't want anybody killed, didn't know anybody was going to be killed, didn't participate, didn't do it." The defense conceded in its opening statement that any judgment on defendant's "moral character" would "come up with a F on that."

After the prosecution's case-in-chief, the defense moved for acquittal on the Howell and Armtrout counts under Penal Code section 1118.1. The motion was denied. The defense then rested without presenting any witnesses. The defense argued to the jury that defendant could not have been present at the Armtrout killing because he had gotten the details wrong and was just trying to say what his interrogators wanted to hear. As to the other killings, the defense asserted that "there is zero evidence that Loren was anything but a coward who couldn't turn in his friend."

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[12] The trial court instructed the jury on the target offenses of kidnapping, false imprisonment, robbery, rape, forcible oral copulation and sexual battery. The prosecutor argued that robbery was the target offense as to the Howell, Cavanaugh and King killings and that rape was the target offense as to the Armtrout and Vanderheiden killings.

The jury acquitted defendant of the Howell murder but convicted him of the lesser offense of being an accessory (Pen. Code, § 32) to that murder. The jury also acquitted defendant of the Armtrout murder. Defendant was convicted of three counts of first degree murder for the Cavanaugh, King and Vanderheiden murders. The jury found untrue the multiple murder special circumstance allegation (Pen. Code, § 190.2, subd. (a)(3)). Defendant's new trial motion was denied. He was committed to state prison to serve a total term of 78 years to life. Defendant filed a timely notice of appeal.

III. Analysis

A. Admissibility of Defendant's Statements

Defendant presents a multi-pronged attack on the admission of his statements at trial. He claims that his statements were inadmissible because they were (1) the product of a search warrant that was not supported by probable cause, (2) obtained after he invoked his right to remain silent and (3) involuntary.

1. Background

In July 1999, the prosecution filed a motion seeking admission of defendant's statements at the preliminary examination.[13] In response, defendant objected to the admission of his statements after the initial interrogation on March 17 on the same grounds that he now raises except that he did not claim that they were the product of an invalid warrant.[14] The prosecution prevailed. Defendant raised these same issues

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[13] The prosecution conceded that "[w]ithout Loren Herzog's statements to authorities there is no evidence to establish his guilt in any of the homicides with which he is charged."

[14] Defendant also claimed below that these statements should be suppressed because he had invoked his right to counsel. He does not renew this contention on appeal.

again in a motion to dismiss the charges under Penal Code section 995. The charges were not dismissed.

Defendant again raised these issues in a motion in limine. He also sought to suppress all of his statements on the grounds that the warrant for blood and hair samples was not supported by probable cause and the statements were the illicit fruit of this warrant. Defendant claimed that the warrant had been a mere pretext for interrogating him. The trial court found that the affidavit contained probable cause and denied his motion to quash.

At the hearing on defendant's attempt to traverse the warrant, Scheffel testified that she had interviewed defendant on November 15, 1998. It was "dark" and she did not "examine him" or "look for injuries." She did not observe any injuries. Scheffel testified that, when she prepared the warrant affidavit, she did not have "results of the DNA testing" and did not even learn of those results on March 22 when the results were reported.[15] She testified: "I do not recall having trickled in DNA results." She asserted that, if she had had a basis for an arrest warrant, she would have sought one rather than a search warrant. Scheffel believed that there was cause to obtain defendant's blood because blood had been found in Shermantine's car and defendant and Shermantine had been together in that car at the time of Vanderheiden's disappearance. She wanted to "include or exclude" defendant "as having been the donor" for the blood in the car.[16]

Herrera testified that he had told defendant on March 17, when he executed the warrant, that "we had some early returns" from the DNA testing of the blood from the

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[15] At trial, the evidence established that the first DNA report was "dated March 22nd, 1999," a second report was dated May 20, 1999 and the final report was issued on February 14, 2000.

[16] None of defendant's blood was actually found in Shermantine's car, but some blood that was not Vanderheiden's and could have been Shermantine's was found in the trunk of the car.

trunk showing that the blood was Vanderheiden's. He testified that he had learned of these "early returns" from Scheffel a week or two prior to March 17. Herrera then testified that he was not sure he had heard this from Scheffel but perhaps instead from some other person in Scheffel's presence. He claimed he had heard that "early tests have been positive, however, it wasn't sufficient enough to conclusively determine for court purposes and for arrest purposes, and we would have to wait for further results so that the numbers would be totally conclusive and presentable." Defendant's trial counsel did not challenge Scheffel's testimony that she was not aware of the DNA results when she prepared the warrant affidavit. Instead, he challenged the veracity of Herrera's testimony that "there was a DNA result" prior to the service of the warrant.

Defendant also tried to demonstrate that the warrant was a mere pretext to interrogate defendant. Herrera testified about the circumstances of his execution of the warrant.[17] When defendant started to speak, Herrera told him: "This is the last opportunity, if you are not guilty, you are going to have to be able to talk to me. But before you do, I'm going to advise you of your Miranda rights, and I'm going to take you down to our office, and I'm going to advise you of Miranda rights before I ask you any questions." Herrera told defendant "to remain silent until such a time he was asked any questions and was totally advised of his rights." Herrera "advis[ed] him not to say anything." Herrera told defendant: "not to say anything until I can get in the proper setting and advise him entirely of his Miranda rights."

Sheriff's Deputy Bruce Wuest testified about the circumstances of defendant's arrest. Wuest testified that Herrera and Cruz had "turn[ed] over" defendant to him at 1:15 a.m. on March 18. Wuest transported defendant to the hospital and arrived there at 1:30 a.m. The hospital is less than a mile from the sheriff's office. Wuest testified

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[17] Portions of Herrera's and Wuest's preliminary examination testimony were used as evidence at the hearing on defendant's challenges to the warrant.

that defendant was then transported back to the jail where Wuest booked defendant into jail at 3:22 a.m. on March 18.

Defendant's trial counsel argued that defendant had been "seized for the purpose of interrogation" and the warrant was used as a "pretext" rather than to obtain the blood and hair samples. He also urged that there was no indication that defendant wished to make a statement so as to justify taking him to the sheriff's office rather than to the hospital. The prosecutor argued that any "pretext" was attenuated from the statements. "I would submit that there was attenuation, there was an independent source and inevitable discovery."

The court found that, based on the statements made by Shermantine and the woman who lived with his family that were recounted in the warrant affidavit, "there was possible contact with the car" by defendant that justified obtaining blood and hair samples from defendant. It also found that defendant's statements to the police were "voluntary at the defendant's request and not pursuant to the search warrant" and that the warrant was "not a mere pretext." The court denied the suppression motion.

The prosecution did not seek admission of the statements defendant made on March 18 or 19 or the March 21 statements to Herrera and Cruz. The prosecution only sought admission of the March 17 statements, the March 21 statements to Ragsdale and Johnson and the March 22 statements to Herrera and Brakensiek. The prosecutor argued that the "totality of the circumstances" during the post-March 17 interrogations demonstrated that defendant had spoken voluntarily.

Defendant's trial counsel argued that none of defendant's statements were admissible because defendant had never waived his constitutional rights to silence and to counsel. He also asserted that defendant had repeatedly invoked his right to remain silent and it was coercive to continue to question defendant after his invocations. Defendant's trial counsel claimed that the promise of a visit with defendant's wife and parents on March 21 was used to coerce defendant to make statements. He also argued

that the delayed arraignment had been "standard operating procedure" that was "exploited" to obtain statements from defendant.

The court found that all of the statements were voluntary. The court concluded that defendant had invoked his right to remain silent three times: On March 17, near the end of the interrogation, when defendant said "I don't want to go there now;" on March 18 when he was asked about the Daggett Road killings and said "I don't want to though, man;" and on March 19 when he said "I'd rather not get into that now." The court ruled that defendant's statements on March 21 and 22 were nevertheless admissible, and it simply ruled that the prosecution could not introduce any statements made after an invocation during a particular interrogation.[18]

The court found that the timing of the arraignment was not improper because the arrest had occurred on Thursday, March 18 and therefore the arraignment "did not have to be until Monday[, March 22]."

2. The Search Warrant

Defendant asserts that the blood and hair search warrant was invalid because (1) the affidavit did not establish probable cause, (2) Scheffel made material omissions from the affidavit and (3) the warrant was a mere pretext for interrogation. He claims that the trial court prejudicially erred in admitting evidence of his March 17 statements and the March 21 and 22 statements at trial because these statements were the illicit products of that invalid warrant.

a. Probable Cause

"[A]fter-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate's 'determination of probable cause should be paid great deference by reviewing courts.'" (*Illinois v. Gates* (1983) 462

[18] Defendant renewed his objections to the admission of his statements at trial. The trial court did not alter its ruling.

U.S. 213, 236 quoting *Spinelli v. United States* (1969) 393 U.S. 410, 419.) "Reflecting this preference for the warrant process, the traditional standard for review of an issuing magistrate's probable-cause determination has been that so long as the magistrate had a 'substantial basis for . . . conclud[ing]' that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more." (*Ibid.* quoting *Jones v. United States* (1960) 362 U.S. 257, 271.)

"Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded warrants." (*United States v. Ventresca* (1965) 380 U.S. 102, 109.) Where the affidavit provides sufficient information to enable the magistrate to act independently rather than merely ratifying the conclusions of the affiant, the affidavit is not legally insufficient. (*Illinois v. Gates*, *supra*, 462 U.S. at p. 239.) "The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Id.* at p. 238.)

The question here is whether the magistrate could have concluded, based on the circumstances set forth in the affidavit, that there was a "fair probability" that some of the blood in Shermantine's car would prove to be defendant's blood. While the inference was not particularly strong, the magistrate could have deduced as much from the affidavit. The affidavit supported an inference that defendant (with or without Shermantine) had utilized Shermantine's car to meet Vanderheiden on the night of her disappearance. The presence of blood in the trunk and elsewhere on the car coupled with Shermantine's claim that defendant had admitted stabbing Vanderheiden to death tended to implicate both men. With no sign of struggle in Vanderheiden's car, a reasonable inference could be drawn that any struggle had occurred in Shermantine's car. Further, it is a reasonable inference that a killing perpetrated by someone who

"flipped out" and stabbed a friend to death might well result in a blood-producing injury to the perpetrator. Giving due deference to the magistrate, he could have concluded that there was a fair probability that defendant's blood would be found commingled with Vanderheiden's blood in or on Shermantine's car thereby implicating defendant in her death. The warrant was therefore supported by probable cause.

b. Omissions From Affidavit

"A defendant who challenges a search warrant based upon an affidavit containing omissions bears the burden of showing that the omissions were material to the determination of probable cause." (*People v. Bradford* (1997) 15 Cal.4th 1229, 1297.) The defendant also bears the burden of proving that the omissions were deliberate or reckless and that the inclusion of the omitted facts would have precluded a finding of probable cause. (*Bradford* at p. 1297; *People v. Luttenberger* (1990) 50 Cal.3d 1, 15 and fn. 4.)

Defendant alleges that Scheffel omitted four material facts. First, he claims that she failed to disclose that she had seen no injuries on defendant less than 48 hours after Vanderheiden's disappearance. Scheffel testified at the hearing on the motion to traverse the warrant that she had interviewed defendant on November 15, 1998. It was "dark" and she did not "examine him" or "look for injuries." She did not observe any injuries. Given the context of Scheffel's lack of observation of injury, we agree with the trial court's implied finding that Scheffel's omission of this information was not deliberate or reckless.

Second, defendant asserts that Scheffel failed to disclose information that would have damaged Shermantine's credibility thereby undermining the reliability of his accusation against defendant. Not so. It was clear from Scheffel's affidavit that Shermantine had no credibility whatsoever. Consequently, the trial court correctly found that any such omission was not material to probable cause.

Third, defendant maintains that Scheffel should have disclosed that Shermantine had previously failed to mention lending his car to defendant. However, the affidavit clearly implied that Shermantine had not made this accusation earlier, so Scheffel's failure to expressly include it was not material.

Finally, he contends that Scheffel omitted to mention that initial blood tests had already revealed that the blood belonged to Vanderheiden. Defendant failed to prove at the hearing that Scheffel was aware of any blood test results at the time she prepared the affidavit. She testified that she was not. Hence, the trial court could properly conclude that she did not deliberately or recklessly omit mention of blood test results.

The record supports the trial court's implied finding that defendant failed to prove that Scheffel made deliberate or reckless material omissions from the affidavit. It follows that the trial court did not err in denying defendant's motion to traverse the warrant.

c. Pretext

Defendant claims that the warrant was invalid because Scheffel obtained it as a mere pretext for interrogating him. Assuming arguendo that an otherwise valid search warrant supported by probable cause can be challenged on this ground, the record simply cannot support this claim. Scheffel had already questioned defendant three times without obtaining any warrant whatsoever. Defendant had never expressed any reservations about talking to her about the Vanderheiden case. After he was informed that deputies had been looking for him on March 16, defendant, of his own volition, telephoned the sheriff's department and offered to arrange to meet and talk with them. Given defendant's history of voluntarily speaking with the deputies about the Vanderheiden case, it stretches credulity to suggest that Scheffel obtained the blood and hair warrant solely as a pretext to interrogating defendant yet again.

We reject defendant's challenges to the validity of the warrant.

3. Invocation of Right to Remain Silent

Defendant maintains that the trial court erred in admitting his March 21 and 22 statements because they were made after he had previously invoked his right to remain silent. He claims that the trial court erred in (1) failing to find that he had invoked his right to remain silent during the March 21 interrogation and (2) concluding that his March 17, 18, 19 and 21 invocations did not preclude the admission of his March 21 and 22 statements.

"An appellate court applies the independent or de novo standard of review, which by its nature is nondeferential, to a trial court's granting or denial of a motion to suppress a statement under *Miranda* insofar as the trial court's underlying decision entails a measurement of the facts against the law. [Citations.] As for each of the subordinate determinations, it employs the test appropriate thereto. That is to say, it examines independently the resolution of a pure question of law; it scrutinizes for substantial evidence the resolution of a pure question of fact; it examines independently the resolution of a mixed question of law and fact that is predominantly legal; and it scrutinizes for substantial evidence the resolution of a mixed question of law and fact that is predominantly factual." (*People v. Waidla* (2000) 22 Cal.4th 690, 730.)

a. Invocations

The trial court found that defendant had invoked his right to remain silent during the March 17, 18 and 19 interrogations, and it suppressed the statements that defendant had made during each of those interrogations after his invocations. It did not suppress any of the statements that defendant made during his March 21 interrogation by Ragsdale and Johnson or during his March 22 interrogation. Defendant argues that the trial court erred in failing to find that he invoked his right to remain silent during the March 21 Ragsdale/Johnson interrogation when he said: (1) "I don't know whether I should tell you about that;" (2) "I don't. I really don't;" and

(3) "Don't wanna talk." He claims that the continuation of the interrogation after these statements violated his constitutional rights and therefore should have resulted in suppression of his statements.

An interrogation must cease if the suspect "indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent . . . ." (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1238, citation and quotation marks omitted.) Whether an invocation of the right to remain silent occurred is a question of fact that is reviewed solely for substantial evidence. (*Musselwhite* at p. 1238; *Waidla* at p. 730.)

The first of these alleged invocations occurred just after defendant was informed of his rights and acknowledged his understanding of them. Ragsdale asked defendant if he had "given any more thought to . . . what happened out on, ah, Daggett Road?" Defendant said "Not really." Ragsdale asked "What can you tell me about that?" Defendant said "I don't know whether I should tell you about that." Johnson interjected "Put it this way, we know about it . . . ." Defendant said "I know you guys do." Johnson told him "this is kinda your chance to tell your version of what happened and to tell us what you saw and how you felt." Defendant said "Kind of felt like I do now." Defendant then told the officers about the Daggett Road killings.

The context of defendant's "I don't know whether I should tell you about that" statement demonstrates that this statement was not an indication by defendant that he wished to remain silent. He had just been informed of and acknowledged his understanding of his right to remain silent. Defendant did not say that he wished to remain silent but simply expressed uncertainty about exactly what he "should tell" the officers. He expressed no desire to be silent but instead responded to the officers' questions. The trial court's determination that this was not an invocation is supported by substantial evidence.

The second and third alleged invocations occurred near the end of the March 21 Ragsdale/Johnson interrogation. After telling the officers about the Daggett Road

killings, defendant said "Probably should've remained silent, huh?" The officers then allowed him a cigarette break after which defendant complained "Oh, man. Do we have to keep talking?" Johnson said "Well, I'd like to. I know you really don't want to but . . . ." Defendant said "I don't. I really don't." Johnson said "that's your, your choice . . . that's, you know, if you don't wanna talk with us that's, ah, we can, we can stop, like I said, after I mean coming, once you go in tomorrow, whether or not we'll be able to talk about anything any more, I don't know. . . . it's up to you, we can talk until your wife gets here." Johnson again encouraged defendant to talk, but eventually he said: "Is it you don't know anything else or you just don't wanna talk about anything else?" Defendant said "Don't wanna talk." Johnson and Ragsdale did not terminate the interrogation. Johnson asked defendant if "someday . . . if it becomes advantageous to you, you may wanna discuss other things?" Defendant said: "Yeah, oh definitely there, yeah. Maybe someday I can tell you about 'im either way."

We agree with defendant that his statements "I really don't" and "Don't wanna talk" were invocations of his right to remain silent. However, since the continuation of this interrogation after the invocations did not produce any incriminating statements, the trial court's failure to find that these statements were invocations did not prejudice defendant unless these additional invocations somehow tainted defendant's March 22 statements.[19]

b. Consequence of Failure to Honor Invocations

Defendant asserts that his March 17, 18 and 19 invocations precluded the admission of his March 21 and 22 statements and his March 21 invocation precluded the admission of his March 22 statement.

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[19] While the March 21 Ragsdale/Johnson interrogation was immediately followed by an interrogation by Herrera and Cruz, the prosecution did not seek admission of any statements made during the Herrera/Cruz interrogation.

He claims that *Michigan v. Mosley* (1975) 423 U.S. 96 precludes the admission of statements made during a subsequent interrogation after an earlier invocation where the earlier interrogation did not "immediately cease" upon the invocation. In *Mosley*, the U.S. Supreme Court held that an invocation of the right to remain silent did not "create a per se proscription of indefinite duration upon any further questioning" by the police. (*Mosley* at pp. 102-103.) Instead, the court concluded that "the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'" (*Mosley* at p. 104.)

The continuing viability of this portion of *Mosley* is questionable. In *Oregon v. Elstad* (1985) 470 U.S. 298, the U.S. Supreme Court held that an earlier interrogation that was not preceded by an admonition or a waiver of the suspect's constitutional rights did not require the exclusion of a subsequent statement made after proper admonitions had been given and a waiver obtained. The sole distinction between the two cases is that the suspect in *Mosley* was informed of and invoked his rights during the initial interrogation while the suspect in *Elstad* was neither informed of nor did he waive his rights in the initial interrogation. Defendant asserts that *Elstad's* holding that a subsequent statement is not tainted by a *failure to inform* a suspect of his rights or a *failure to obtain a waiver* does *not* mean that the *failure to honor an invocation* of rights does not taint a subsequent statement.

We do not write upon a clean slate here. The California Supreme Court has already held that *Elstad* is just as applicable where the police fail to honor an invocation as it is where the police have failed to inform a suspect of his rights or obtain a waiver. Where a suspect invokes his *Miranda* rights but he is still interrogated in violation of his rights, a subsequent uncoerced statement that is made after proper advisements and waivers is admissible if the earlier interrogation was not coercive and the earlier statement was voluntary. (*People v. Storm* (2002) 28 Cal.4th

1007, 1033.) In *People v. Bradford* (1997) 14 Cal.4th 1005, the defendant was informed of his rights and invoked his right to counsel. The police nevertheless continued to interrogate him. (*Bradford* at p. 1039.) After this improper interrogation, the defendant was again informed of his rights, waived them and gave another statement. The earlier statement was suppressed, but the subsequent statement was admitted. The California Supreme Court held that the interrogation of the defendant after he invoked his right to counsel did not "inherently constitute coercion." The earlier statement did not taint the subsequent statement so long as the earlier statement was voluntary. (*Bradford* at pp. 1039-1040.)

We are bound to follow the California Supreme Court's conclusion that *Elstad* is applicable not only where admonitions have not been given and waivers have not been obtained but also where an invocation has not been honored. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Consequently, we must reject defendant's reliance on *Mosley*.

Under *Bradford*, defendant's invocations of his right to remain silent during the March 17, 18, 19 and 21 interrogations do not *automatically* render inadmissible his subsequent statements. Instead, these invocations require the exclusion of the subsequent statements only if the earlier statements were involuntary.

4. Voluntariness

"In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances--both the characteristics of the accused and the details of the interrogation. Some of the factors taken into account have included the youth of the accused . . ., his lack of education, or his low intelligence . . ., the lack of any advice to the accused of his constitutional rights . . ., the length of detention . . ., the repeated and prolonged nature of the questioning . . ., and the use of physical punishment such as the deprivation of food or sleep . . . ." (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226, citations omitted.)

"A finding of coercive police activity is a prerequisite to a finding that a confession was involuntary under the federal and state Constitutions. [Citations.] A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence. [Citation.] Although coercive police activity is a necessary predicate to establish an involuntary confession, it 'does not itself compel a finding that a resulting confession is involuntary.' [Citation.] The statement and the inducement must be causally linked." (*People v. Maury* (2003) 30 Cal.4th 342, 404.) The prosecution bears the burden of proving by a preponderance of the evidence that the statements were voluntary. (*People v. Benson* (1990) 52 Cal.3d 754, 779.) We exercise independent review on appeal. (*Benson* at p. 779.)

Defendant argues that the prosecution failed to sustain its burden of proving that his statements were voluntary. He identifies an array of circumstances that he claims were unduly coercive: (1) the officers and deputies disregarded his invocations; (2) the interrogations were lengthy; (3) the arraignment was delayed for more than four days; (4) the officers suggested that obtaining a lawyer would not be in defendant's best interest; (5) the officers and deputies used "deceptive pressure tactics" and (6) the officers and deputies made coercive threats and promises.

Although the only post-March 17 statements that were introduced at trial were defendant's March 21 statements to Ragsdale and Johnson and his March 22 statements to Herrera and Brakensiek, under *Bradford* the admissibility of these statements depends not only on *their* voluntariness but also on the voluntariness of the March 18 and 19 statements and defendant's March 21 statements to Cruz and Herrera since defendant invoked his right to remain silent on March 17, 18, 19 and 21. We must therefore consider the voluntariness of all of defendant's post-March 17 statements.

a. Potentially Coercive Circumstances

We begin by addressing whether several recognized types of potentially coercive circumstances existed here. That inquiry will be followed by a consideration of whether the totality of all of the circumstances rendered defendant's statements involuntary.

i. Disregard for Invocations

We have already noted in the previous section that the trial court determined that the officers and deputies did not honor defendant's invocations of his right to remain silent during the March 17, 18 and 19 interrogations, and we have determined that the officers failed to honor defendant's invocation on March 21. While their disregard for his invocations did not immediately produce incriminating statements, the accumulated impact on a suspect of repeated disregard for his invocation of his rights is potentially coercive and may, when combined with other coercive circumstances, render statements involuntary. (*Bradford* at p. 1041.) The impact of the disregard of defendant's invocations is particularly acute here because this disregard occurred repeatedly on four separate days. It may well play a role, in conjunction with other circumstances, in creating a coercive environment.

ii. Prolonged Interrogation

Prolonged interrogation may be coercive. (*Schneckloth, supra,* at p. 226.) Some of the interrogations of defendant were indeed prolonged. After the four-hour March 17 interrogation followed by an hour-and-a-half-long ride with the deputies, defendant was interrogated six additional times over a five-day period. On March 18, there was a brief fifteen to twenty-minute interrogation by Cruz and Herrera followed by a two-and-a-half-hour interrogation by Ragsdale and Johnson. On March 19, defendant was interrogated for 45 minutes by Cruz and Herrera. On March 21, defendant was interrogated by Ragsdale and Johnson for an hour and a half and then by Cruz and Herrera for an hour and a half. On March 22, Herrera and Brakensiek

interrogated defendant for a little over an hour. The cumulative impact of more than ten hours of often lengthy periods of interrogation had the potential to be coercive.

iii. Delayed Arraignment

The arraignment in this case did not occur within 48 hours of defendant's arrest. Although defendant was taken into custody in the early evening on March 17 and was under arrest no later than the early morning hours on March 18, he was not arraigned until *more than four days later* on March 22.

Delay in arraignment is one factor in determining the voluntariness of a defendant's admissions.[20] (*People v. Morris* (1991) 53 Cal.3d 152, 200.) In *County of Riverside v. McLaughlin* (1991) 500 U.S. 44, the U.S. Supreme Court held that, while "the Fourth Amendment permits a reasonable postponement of a probable cause determination while the police cope with the everyday problems of processing suspects through an overly burdened criminal justice system," "flexibility has its limits." (*McLaughlin* at p. 55.) The court identified this limit as 48 hours. An arraignment held *within 48 hours* passes muster unless the defendant shows that the delay was "for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." "[U]navoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest, and other practical realities" can justify a delay of *up to 48 hours*. (*McLaughlin* at p. 57.) On the other hand, where the arraignment occurs after a delay of *more than 48 hours*, "the burden shifts to the government to demonstrate the

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[20] Defendant also separately asserts that the delay in arraignment alone required the exclusion of his March 21 and 22 statements as the illicit product of this impermissible delay. Since we find the statements to be inadmissible involuntary statements, we need not consider this contention.

existence of a bona fide emergency or other extraordinary circumstance," and "intervening weekends" or a need to "consolidate pretrial proceedings" do not "qualify as an extraordinary circumstance." (*McLaughlin* at p. 57.) A County policy to delay arraignments to Monday for those arrested on Thursdays is also inadequate to justify the delay. (*McLaughlin* at p. 58.)

"[T]he only permissible delay between the time of arrest and bringing the accused before a magistrate is the time necessary: to complete the arrest; to book the accused; to transport the accused to court; for the district attorney to evaluate the evidence for the limited purpose of determining what charge, if any, is to be filed; and to complete the necessary clerical and administrative tasks to prepare a formal pleading." (*People v. Thompson* (1980) 27 Cal.3d 303, 329, citation and quotation marks omitted.)

Defendant's arraignment was unquestionably delayed beyond the 48-hour limit after which the U.S. Supreme Court has mandated that the prosecution bear the burden of justifying the delay with proof of "extraordinary" circumstances. The prosecution made no attempt below to present any evidence of extraordinary circumstances that could have justified this delay. By the morning of March 18, defendant had been arrested and booked for the Vanderheiden killing. His arrest occurred *after* the district attorney had been consulted. There is no indication in the record that any time-consuming clerical or administrative tasks were contemplated or that such tasks could not reasonably be completed in less than four days. Yet defendant was informed during a *March 18* interrogation that his arraignment would not occur until March 22. This disclosure rebuts any inference that the delay was the product of defendant's subsequent statements about crimes other than the Vanderheiden killing. The most favorable (to the prosecution) inference that can be drawn from this record is that defendant's delayed arraignment was the product of a policy precisely like the one disapproved by the U.S. Supreme Court in *McLaughlin*. The only alternative

inference is that the arraignment was delayed solely to permit the deputies and officers to continue to interrogate defendant prior to the appointment of counsel. The impermissible delay in the arraignment must be considered as part of the totality of the circumstances in deciding whether defendant's statements were involuntary.

iv. Statements About Counsel

Even where a suspect does not explicitly invoke his or her right to counsel, statements by the police denigrating the value of having counsel present during questioning may have the improperly coercive effect of encouraging the suspect to continue to speak without benefit of counsel. (*Collazo v. Estelle* (9th Cir. 1991) 940 F.2d 411, 418.)

During both the March 18 and March 21 Ragsdale/Johnson interrogations, Johnson discouraged defendant from obtaining counsel by suggesting that having an attorney would be detrimental to defendant's interests because an attorney would preclude defendant from talking to the officers. Johnson also told defendant that he could not obtain an attorney until March 22, at which point it would be too late to take advantage of Johnson's offer of leniency. We will discuss Johnson's statements in greater detail in our analysis of the totality of the circumstances. This is another circumstance that we must consider as to the voluntariness of defendant's statements.

v. Manipulation and Deception

Defendant identifies many alleged instances of what he calls "manipulation" and "deceptive pressure tactics."

The deputies and officers repeatedly misled defendant to believe that Shermantine was implicating him in all of the killings. One message that their comments conveyed was that defendant should "come clean" and tell them everything so that they could confirm that it was Shermantine, not defendant, who was responsible for the killings and then defendant would not have Shermantine's alleged accusations hanging over him in the future.

This type of deception is not necessarily impermissible. In *People v. Jones* (1998) 17 Cal.4th 279, the officers falsely implied that they already knew about the crimes and were seeking to confirm those facts. (*Jones* at p. 297.) The California Supreme Court found nothing improper in this kind of deception because it was "not of a type reasonably likely to procure an untrue statement." (*Jones* at pp. 298-299, citation and quotation marks omitted.) The same could be said here. The deception alone was not necessarily coercive because it was not likely to procure an untrue statement.

vi. Threats and Promises

"The line to be drawn between permissible police conduct and conduct deemed to induce or to tend to induce an involuntary statement does not depend upon the bare language of inducement but rather upon the nature of the benefit to be derived by a defendant if he speaks the truth, as represented by the police. Thus, 'advice or exhortation by a police officer to an accused to "tell the truth" or that "it would be better to tell the truth" unaccompanied by either a threat or a promise, does not render a subsequent confession involuntary.' . . . . [¶] When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity. On the other hand, if in addition to the foregoing benefit, or in the place thereof, the defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible. The offer or promise of such benefit need not be expressed, but may be implied from equivocal language not otherwise made clear." (*People v. Hill* (1967) 66 Cal.2d 536, 549.)

The question presented is whether the officers and deputies used "equivocal language" that implied that defendant might be treated more leniently if he made a

statement. We believe that they did. The deputies told defendant at the beginning of the first brief March 18 interrogation that his only hope of extricating himself from this situation was to "cooperate" because Shermantine was blaming him for both the Vanderheiden and Daggett Road killings. Then, at the beginning of the second March 18 interrogation, after urging defendant to "come clean" and suggesting that Shermantine was blaming defendant for the Wheeler and Howell killings, Ragsdale suggested to defendant that "*we could do something about this* [the Daggett Road killings]" if defendant told them he "had something to do with this . . . *let's take care of it* and let's get it done with." (Emphasis added.) Ragsdale and Johnson continued to suggest to defendant that telling everything he knew was his only hope. "Only you know what he's got on you. And as long as you keep it locked up inside you, it . . . we're not gonna . . . be able to *use it to help you* at all." (Emphasis added.) Later in this same interrogation, Johnson suggested that defendant *might be released* if Johnson and Ragsdale told the district attorney that defendant was "being truthful." And Johnson told defendant that this offer would be "null and void" once defendant obtained an attorney.

The statements by the officers and deputies that defendant's only hope was to cooperate with them and that they could "do something about this" if only he would tell them everything were implied promises of leniency and also implied threats. The implied threat was that, *unless* defendant cooperated and told them everything, he had no hope and they would *not* "do something" to "help" him. The implied promise was that they *would* "do something" to "help" him *if* he would tell them everything. These implied promises and threats are qualitatively different than the statement by the officer in *Jones* that they would tell "the district attorney that defendant had been honest." (*Jones* at p. 297.) The statement in *Jones* was far less concrete and coercive and did not strongly imply that statements would produce leniency. The statements by the officers and deputies here are among the circumstances that must be considered as

part of the totality of the circumstances in determining whether defendant's statements were an exercise of free will or the product of coercion.

b. Totality of the Circumstances

No single circumstance determines whether a statement was the product of coercion. Such a conclusion depends upon a consideration of the entirety of the conduct of the officers and deputies, the circumstances of the interrogations and the characteristics of the defendant.

In this case, defendant's personal characteristics do not weigh heavily in this equation. As a 33-year-old high school graduate, defendant was neither particularly youthful nor uneducated. His emotional state during the extended interrogations varied from tearful to passive to "scared." He expressed great trust in the officers and deputies and appeared to mistakenly believe that they were looking out for his best interests.

The interrogations themselves lead us to conclude that defendant's statements during the March 21 and 22 interrogations were involuntary and therefore inadmissible. Although we have already exhaustively described the interrogations, it is helpful to analyze the coercive aspects of the interrogations through a chronology.

The context in which the interrogations took place must be borne in mind. Defendant had been twice interviewed by sheriff's deputies in the week after Vanderheiden's November 1998 disappearance and a third time a couple of months later. The latter two interviews took place in a sheriff's department interview room, but only one of them was lengthy. More than a month after the third interview, sheriff's deputies executed a search warrant at defendant's home and left word that they needed to contact him. Defendant responded the next morning by telephoning the sheriff's department and leaving a message indicating his willingness to talk to them. At this point, defendant clearly realized that the authorities were closing in on him and that he needed to talk to them about the Vanderheiden killing.

When Cruz and Herrera came to see defendant, they told him that Vanderheiden's blood had been found in Shermantine's car and "[t]his is *the last opportunity*, if you are not guilty, you are going to have to be able to talk to me." (Emphasis added.) Defendant soon began crying and plaintively asked "[w]hat can I do to get out of this?" Herrera warned him not to speak until he had been advised of his rights and then engaged him in small talk during the drive to the sheriff's department. We do not doubt that at this point defendant was willing to talk to the deputies about the Vanderheiden killing.

Defendant was initially properly advised of his rights and then freely told the deputies about the Vanderheiden killing. As defendant concedes, this statement was clearly voluntary. When the deputies thereafter urged defendant to tell them of other crimes that he and Shermantine had perpetrated and suggested that Shermantine would blame defendant for the Vanderheiden killing, defendant insisted that there were no other crimes. Defendant then invoked his right to remain silent, thereby evidencing his unwillingness to talk other crimes. The deputies did not heed his invocation but instead continued to interrogate him.

The March 17 interrogation lasted nearly four hours and was immediately followed by an hour-and-a-half-long ride with the deputies and then a trip to the hospital to extract the hair and blood samples. Although the district attorney's office had already authorized the arrest of defendant before the ride, defendant was not formally arrested and booked until 3:22 a.m. on March 18. After these many hours of interrogation and transport, defendant was exhausted. He was allowed to sleep but was not fed before the next afternoon's resumption of interrogation. The extended nature of the March 17 interrogation combined with defendant's physical exhaustion and lack of food were potentially coercive circumstances.

At the outset of the first March 18 interrogation, Herrera characterized defendant's constitutional rights as "just a formality," and defendant said he did "[n]ot

really" understand his rights. Having experienced the deputies' disregard for his previous attempt to invoke his right to remain silent, defendant might well have harbored some confusion about his rights. Under pressure from Cruz, defendant conceded "Yeah whatever, I understand them." This transformation from an assertion of not understanding to an acknowledgment of understanding was indicative of defendant's susceptibility to pressure.

When defendant expressed his dismay at learning that he had been charged with Vanderheiden's murder, Cruz warned defendant that, unless "we" "clear that up," this charge "is gonna stick." Defendant responded "I don't want that to stick, man," and Cruz threatened: "Then you better you better s--*you better cooperate with us then*." (Emphasis added.) The deputies also falsely told defendant that Shermantine was blaming defendant for raping and killing Vanderheiden and the Daggett Road killings, The threat that defendant would be "stuck" being blamed for Vanderheiden's rape and murder and the Daggett Road killings unless defendant "cooperate[d]" was a potent and coercive one, but defendant still resisted.

Just two hours after the deputies' interrogation, Ragsdale and Johnson appeared for the first time. Before even being advised of his rights, defendant questioned whether he should be talking to the officers in the absence of an attorney. "Um, but I don't have a public defender or anything." "Am I supposed to be answering any questions?" Ragsdale responded by informing defendant of his rights. When he asked defendant if he understood his rights, defendant said "Yeah, I guess so." There is no indication that these advisements resolved defendant's earlier uncertainty about the meaning of his constitutional rights.

Ragsdale suggested that Shermantine had "got something on you" and pressed defendant to admit it so that the officers would "be able to take care of that somehow." Ragsdale's offer to "take care of" whatever defendant admitted was clearly an implied promise of leniency in exchange for an inculpatory statement. Adding weight to their

argument, Ragsdale and Johnson suggested that Shermantine was also blaming defendant for the Howell killing. Ragsdale reiterated his implied promise of leniency by telling defendant "we could do something about this [defendant's responsibility for the Daggett Road killings]." Ragsdale also said he would not "be able to use it to help you at all" unless defendant told them what it was that Shermantine had "got on you." Ragsdale's offer to "do something" to "help" defendant in exchange for his admissions also amounted to an offer of leniency. When defendant continued to resist the pressure, Johnson chimed in with a threat that the officers would not "give you [defendant] anything" if defendant did not talk. Defendant vaguely conceded "I might know some things." We are convinced that the pressure, threats and promises exerted by the deputies and officers produced this admission.

Johnson suggested a scenario in which defendant was released from custody after a two-year prison term (apparently for his participation in the Vanderheiden killing) and then "drawn back into this mess" when Shermantine implicated defendant in other crimes. Ragsdale told defendant that he *knew* defendant had been at the Daggett Road killings. Defendant reluctantly began to incriminate himself in the Daggett Road killings. Yet, when Ragsdale pressed him for details, defendant invoked his right to remain silent. "I don't want to [talk] though, man." His reluctance to talk about crimes other than the Vanderheiden killing was apparent. Nevertheless, Ragsdale and Johnson ignored defendant's attempt to stop the interrogation and continued to pressure him for more admissions. Defendant tried to stop the interrogation by suggesting, albeit not explicitly, that he needed an attorney. "I think I need somebody to advise me on talking or somethin'." "I need somebody that knows what [I should do]." This attempt too was unsuccessful, and Johnson continued to pressure defendant by telling him that the jury would be more likely to believe him if he "c[a]me forward."

Defendant tried to arrange for a postponement of the interrogation. He also again inquired about when he would get an attorney. Johnson told defendant that he could not get an attorney until March 22, and he implied that it would be too late then for defendant to make a statement. Johnson also emphasized to defendant that he would remain in jail for at least three more days before he could get an attorney. This representation told defendant that he could not get any advice on whether to make a statement until it was too late to do so, thereby placing him in an untenable position. Johnson also told defendant that an attorney would tell him not to talk and that such advice could "hurt" him.

In addition, Johnson led defendant to believe that he might be released if the deputies told the district attorney that defendant was "being truthful." Defendant clearly interpreted Johnson's statements as "a one-time offer" of possible release if he talked. And Johnson told defendant that this offer would be "null and void" once defendant obtained an attorney. Johnson repeated his assertion that, if defendant did not talk, people would believe Shermantine because "he's talking."

At this point, the officers had led defendant to believe that: (1) the interrogations were going to continue regardless of whether he was willing to talk and regardless of his attempts to invoke his right to remain silent; (2) if he did not talk, a jury would believe Shermantine that defendant was responsible for all of the crimes; (3) he could not obtain an attorney's advice about whether to make a statement until March 22; and (4) by that time, it would be too late to help him. We are convinced that these circumstances were coercive and that defendant's subsequent statements were not voluntary.

The March 19 interrogation did nothing to alleviate the pressure on defendant or to correct his misimpression of his rights. The advisements at the beginning of this interrogation failed to inform him of his right to have an attorney present *during questioning*. This was, of course, consistent with what defendant already understood:

he had no choice but to be interrogated until March 22 without an attorney. Even so, defendant again demonstrated his reluctance to talk about any crimes other than the Vanderheiden killing by invoking his right to remain silent. Yet again, his invocation was ignored, and the deputies pressed him to admit to being present at the scenes of other homicides. Eventually, defendant reluctantly answered "[y]es," and the deputies terminated the interrogation. This interrogation too was coercive. The preceding day's interrogations had coerced defendant's first admissions about the Daggett Road killings, and the deputies continued the coercive pressure by misinforming him of his rights, ignoring his invocation and pressuring him until he made admissions.

Defendant was then left to ruminate in jail on his predicament for more than a day before the next interrogation. In our view, the mere passage of time did nothing to alleviate the coercive circumstances created by the actions of the deputies and officers. By this time, the officers and deputies had led defendant to the conclusion that he had no choice but to try to counter Shermatine's alleged implications of him by implicating Shermatine.

At the commencement of the March 21 Ragsdale/Johnson interrogation, the officers reminded defendant that he needed to respond to Shermantine's alleged accusations before he obtained an attorney. Before even informing defendant of his rights, Johnson reiterated that Shermantine's accusations would remain "piled on you" if "you don't throw nothing back." Defendant again complained that he did not understand his rights. His lack of understanding was likely the result of the fact that his multiple attempts to end the interrogations by invoking his right to remain silent had failed, and he had been repeatedly told that he could not obtain an attorney until March 22, at which point the interrogations would be over. Defendant had come to believe, as Johnson was "just explainin' to me," that remaining silent "would hurt me more than anything else." And Johnson reiterated that, even if defendant asked for a lawyer, "you're not gonna get one until Monday." It was in this coercive context that

the officers again pressed defendant to tell them about the Daggett Road killings, and defendant reluctantly did so. These were the March 21 admissions that were introduced at trial, and we would have to ignore the circumstances and coercive conduct that preceded them to conclude that these admissions were not the product of that coercion. It naturally follows that it was error to admit defendant's March 21 statements into evidence at trial.

After these admissions, defendant made another attempt to invoke his right to remain silent, but the officers again ignored him and reminded him that he might not have another opportunity to talk.

The second March 21 interrogation, by Cruz and Herrera, continued the pattern of coercive circumstances and conduct. Even though defendant had invoked his right to remain silent during the first March 21 interrogation, Cruz and Herrera did not advise defendant of his rights at the commencement of their March 21 interrogation. Instead, Cruz told defendant that this was his "last opportunity to clear everything up" and "your credibility here is at stake." Already having been coerced by Ragsdale and Johnson into making inculpatory statements and having had his invocation of his right to remain silent universally ignored, defendant admitted to being present during the Howell killing and described the killing. Although he complained that "my mind feels like mush," he also made some admissions about the Armtrout killing. At this point, little value could be accorded Cruz's post hoc elicitation of defendant's compliant affirmations that he had understood his rights and had spoken voluntarily rather than in response to promises or threats. Defendant's will had clearly been overcome by the coercion of having his rights blatantly disregarded and being subjected to continued pressure fueled by implied promises and implied threats. His extracted and coerced statements to the contrary simply do not establish otherwise.

This brings us to the March 22 interrogation. It began with Herrera telling defendant that this was his "very last opportunity" to talk. The deputies simply

reviewed with defendant his previous coerced statements about the Howell and Armtrout killings. Herrera's post hoc elicitation of defendant's affirmation that he had been made no promises was as inconsequential as Cruz's elicitation of the same affirmation the previous afternoon. Since defendant had already been coerced into making these statements, his reiteration of them was clearly the product of the earlier coercion. Defendant's lack of comprehension was underscored by his statement that he had talked because he was "hoping that I'd be able to go home." This statement was, of course, consistent with the earlier implied promise of possible release in return for his statements. Defendant's statements during this interrogation were the product of the prior coercion.

Therefore, defendant's statements during the first March 21 interrogation and during the March 22 interrogation were involuntary, and the admission of these statements into evidence at trial was error.

c. Prejudice

Defendant asserts, and the Attorney General does not contest, that the admission of his statements during the first March 21 interrogation and the March 22 interrogation was prejudicial. Since these statements constituted the *only* evidence of defendant's culpability for the Howell, Cavanaugh and King killings, it is axiomatic that their admission was prejudicial error with regard to those counts. The sole remaining question is whether the admission of these statements was prejudicial with regard to the Vanderheiden murder count. The Attorney General has declined to argue this point.

The admission of involuntary statements is prejudicial unless the record establishes beyond a reasonable doubt that the statements had no impact on the result. (*People v. Cahill* (1993) 5 Cal.4th 478, 482.) Evidence that a defendant charged with murder has committed prior murders has the "potentially devastating impact" of suggesting to the jury that the defendant has a propensity to commit murder and

therefore committed the later murder. (*People v. Garceau* (1993) 6 Cal.4th 140, 186.) In this case, evidence of defendant's statements regarding the prior killings tended to suggest that he was not just coincidentally, and unwillingly, present when Shermantine raped and killed Vanderheiden but knew in advance of Shermantine's intent and abetted him in luring Vanderheiden to the cemetery. Given this potential for prejudice, we cannot say beyond a reasonable doubt that the admission of defendant's statements about the prior murders had no impact on the jury's decision regarding the Vanderheiden killing. Thus, the admission of the statements was prejudicial as to all counts.

We do not reach this result lightly. Our obligation to safeguard constitutional rights requires us to ensure that law enforcement officers do not utilize coercion to obtain statements from suspected criminals. We are compelled by the U.S. Constitution to enforce this obligation by prohibiting the admission of statements that are the product of such coercion. Constitutional rights must be protected even where the rights in question are those of a person suspected of involvement in a killing. The actions of the deputies and officers in this case necessitate that this matter be retried with the attendant burdens that a retrial places on the court system, the witnesses and the families of the victims.

B. Other Issues

Defendant also contends that the judgment must be reversed because the prosecutor introduced hearsay evidence and committed misconduct. Since we reverse the judgment due to the admission of the involuntary statements, it is not necessary for us to address these contentions. We may presume that the prosecutor will not commit misconduct or introduce inadmissible hearsay evidence at a retrial, and therefore no guidance is necessary for the trial court on these issues.

III. Disposition

The judgment is reversed and remanded for potential retrial on all counts. The trial court is directed to enter an order granting defendant's motion to suppress as to the statements defendant made during the first March 21 interrogation and the March 22 interrogation and denying his motion to suppress as to his statements during the March 17 interrogation.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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McAdams, J.